GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR)

Labour Dispute :—Industrial Dispute between the Workmen and the Management of Jolly Brothers (P) Ltd., Hindustan Aeronautics Ltd., P. O., Bangalore-17.

Award of the Labour Court, Bangalore—published.

Read the following papers,—

(1) Letter No. 892/67-68, dated 14th November 1967 from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 14th day of November 1967.

Present:

Sri P. T. Kadkol, B.Sc., LLB. ... Presiding Officer.

Ref. No. 8 of 1967.

Sri Dastagir, No. 1, Markham Road Cross, Ashoknagar, Bangalore. ... *I Party.*

Vs.

The Management of Jolly Brothers (P) Ltd., Hindustan Aeronautics Ltd., P.O., Bangalore-17. ... *II Party.*

Reference:

Government Order No. LMA 12 LLD 67, Bangalore, dated 6th February 1967.

AWARD.

The Government of Mysore, being of opinion that an industrial dispute exists between the Workmen and the Management of M/s. Jolly Brothers (P) Ltd., Bangalore, have referred it to this Court for adjudication under Section 10 (1) (c) of the Industrial Disputes Act, 1947 by their Order No. LMA 12 LLD 67, dated 6th February 1967, setting out the following points of dispute for adjudication :—

> "Is the management of M/s. Jolly Brothers Private Ltd., Hindustan Aeronautics Ltd., P. O., Bangalore-17, justified in terminating the services of Sri Dastagir, No. 1, Markham Road Cross, Ashoknagar, Bangalore-25 ? If not, what is the relief the worker is entitled to ?"

2. The aggrieved workman, Dastagir was employed by M/s. Jolly Brothers (P) Ltd., (the Second Party, hereinafter referred to as "Company ") as a Motor Vehicle Driver in October 1962, on a salary of 120 per month. His services have come to an end, early in July 1966. According to Dastagir, the Company has terminated his services illegally. According to the Company, it transferred Dastagir to Amaraoti and when it did so, he left his job, voluntarily, by remaining absent and staying away from work. This dispute between Dastagir and the Company, is the subject matter of the present Reference. It has been made by the Government, presumably, under Section 10 (1) (c) of the Industrial Disputes Act, read with Section 2A thereof.

3. The Company is an Engineering Establishment, doing business as "Engineers & Contractors", having its Head Office at Bombay and branch offices at Bangalore, Amaraoti, Jamanagar, Madras and Poona. It had taken some work on contract in the Bangalore region when Dastagir was appointed. That work came to an end, sometime in or before July 1966. Hence, it transferred Dastagir to Amaraoti, by an order dated 2nd July 1966. These facts are admitted on both hands.

4. After setting out the above facts in the statement of claims, Dastagir has averred therein :—

> He found his transfer to Amaraoti a source of dislocation and discomfort; he is the only earning member in his

large family consisting of some school-going children also; even then, he decided to obey the transfer order and requested the Management of the Company to pay him an advance Rs. 200 and Bonus due, so that he could make some provisions for his family before proceeding to Amaraoti; the Management of the Company refused his request; it told him that even his Railway fare would be paid to him, at Amaraoti."

After making these averments, Dastagir has prayed that the Management of the Company be directed to pay him—

(1) Ten days earned leave salary.

(2) One month's salary as notice pay; and

(3) Bonus

It may be noted here that Dastagir has not prayed that the Management of the Company be directed to reinstate him in his former post with backwages and continuity of service.

5. The Management of the Company has submitted its statement of objections, through one of its Directors, by name Mr. T. N. Jolly. The contentions raised therein are:—

> According to the terms of employment, the Management had a right to transfer Dastagir wherever it needed his services; the work undertaken by the Company came to an end by completion; work at Amaraoti was in progress; hence it transfered Dastagir to Amaraoti by an order dated 2nd July 1966; on receiving this transfer order, Dastagir stayed away from work; he wrote to the Management on 5th July 1966, requesting for an advance payment of Rs. 200 and laying some conditions also; the management wrote back to him that he would be paid Railway Fare from Bangalore to Amaraoti and he might take advance payment there; Dastagir did not obey the transfer order nor did he attend the office; he wrote to the Labour Officer on 12th July 1966; Conciliation proceedings were held by that officer and they ended in a failure; since Dastagir has stayed away from work, of his own accord, he is not entitled to any of the reliefs claimed by him and hence the Reference be rejected etc;

6. On these pleadings the following issues have been framed (*Vide* Order Sheet dated 11th August 1967) and set down for hearing :—

1. Is the Second party entitled to transfer Dastagir to Amaroati under his service conditions ?
2. Did the second party offer him all financial facilities to enable him to join at Amaroti ?
3. Is the aggrieved workman entitled to the amounts claimed by him ?

The parties were asked to lead evidence on these issues and the case was posted for evidence on 11th September 1967. This posting order has been signed by Dastagir and Mr. Gururaj Rao, the authorised representative of the company.

7. When the case was called on for hearing on 11th September 1967, it was found that none was present on behalf of the Company. Hence the case was heard in the absence of second party. Dastagir, examined himself (W. W. 1) and closed his side. The case was posted for making the Award.

8. Meanwhile, on 19th September 1967, an application made by Gururaja Rao accompained by an affidavit, was received in the office. It was stated by him therein that he could not attend the Court on 11th September 1967 due to his indisposition and hence an opportunity be given to the Company to defend itself. Notice of this application was issued to Dastagir. On 10th October 1967, he appeard in Court and stated that he had no objection for allowing the application of Gururaj Rao. Hence the case was posted for hearing once again on 31st October 1967.

9. On 31st October 1967, Dastagir and Gururaj Rao were both present. Mr. Gururaja Rao submitted that he did not want to cross-examine Dastagir and that he had also no oral evidence to lead. I have made a note to this effect below the order sheet dated 31st October 1967 under the signature of Dastagir and Gururaja Rao. Hence only arguments of both the parties were heard.

10. The case requires to be decided only on the basis of the pleadings and the testimony of Dastagir for want of any other evidence. Now examining the claim statement closely, we find

that Dastagir is completely silent therein on the point whether he left the job of his own accord or his services were terminated by the Management of the Company. In his deposition, however, he has stated :—

> "I asked for an advance of Rs. 200; the management did not pay me the advance. Management asked me to join at Amaraoti and told me that I would be paid there. The Management also told me that if I wanted service I should go and join at Amaraoti at my own cost and if not, I might quit service...I may be awarded 10 days leave salary, one month's notice pay and Bonus. Bonus is due to me for only one year. Bonus was being paid at the rate of one month's salary for each year. As the Management has no work to give me, I do not want reinstatement..."

11. Dastagir has not alleged in the claim statement that the Management asked him to quit the job, if he did not want to go to Amaraoti. Even in his deposition, he does not say that as he refused to go to Amaraoti, the Management terminated his services. On the other hand, he has stated that he was willing to go to Amaraoti His case appears to be that he did not go to Amaraoti, because the Management of the Company did not pay him an advance of Rs. 200 as requested by him. From the statement of Dastagir, the only inference that can be drawn is, that he left the job of his own accord, because, he could not join at Amaraoti, for want of an advance payment as per his request.

12. The Management of the Company has not led any evidence to prove that under the terms of employment, it had a right to transfer Dastagir to any of its various branch offices. The order of his appointment has not been produced. General Rules, if any, framed by it, regulating the service conditions of its employees, have also not been produced. None from the Company has stepped into the witness box to say that such a condition existed. In these circumstance, I hold that the Company has failed to prove that it had a right to transfer Dastagir to Amaraoti and record my finding on the first issue in the negative.

13. Dastagir has stated that he was willing to go and join at Amaraoti. He did not go and join there because the Company did not pay him a sum of Rs. 200 as advance, as requested by him.

He has not led any evidence to show that it was obligatory on the Company to make him the advance, either under the service conditions or the general rules of the Company, if any. He has not produced the letter written to him by the Company, in reply to his letter requesting for the advance. It has been averred in the written statement, by the Company, that it informed Dastagir that his Railway fare from Bangalore to Amaraoti would be paid. There is no reason to disbelieve this assertion made by the Company. Anyway, since it is not proved that it was obligatory on the part of the Company to make advance payments to Dastagir, I am of the view that the second issue does not survive. I record my finding therein, accordingly.

14. Dastagir has claimed three items of money in the claim statement. The first is, leave wages for ten days, the second is notice pay and the third is bonus. As regards Bonus, he has not led any evidence to show that the Company has declared and paid bonus to its other employees for the year in question. If the Company has declared and paid Bonus to its other employees, Dastagir may enforce this claim by filling an application under Section 33C (2) of the Industrial Disputes Act. As regards notice pay, the evidence on record indicates that Dastagir himself has stayed away from work, on his transfer to Amaraoti, because the Company did not pay him the advance asked by him. Hence it follows that he is not entitled to the Notice pay. As regards the leave salary, Dastagir has not proved that leave was due to him, that it was refused to him when he asked for it. Hence this item of the claim also cannot be allowed.

15. Then in his deposition before me, Dastagir has prayed that the Management be directed to pay him service compensation. He would be entitled to it, either if he has been retrenched or the company has closed its business. Such a claim is maintainable under Section 25F or 25FFF of the Industrial Disputes Act. This case has not been made out by Dastagir, in his statement of claims. Hence the Company has no notice of it. If so advised he may enforce this claim, if he is entitled to it, by filing an application under Section 33C (2) of the Act.

16. So far as this Reference is concerned, it follows that Dastagir is not entitled to any reliefs, except the salary for two

days in July 1966, which the Company has admitted. In the result, therefore, I make an Award as under :—

AWARD

The Reference is partly accepted. The Management is directed to pay Dastagir the salary for two days in which he has worked in July 1966. If so advised, Dastagir may enforce his claim for bonus and service compensation, if he be entitled to them by proceeding under Section 33C (2) of the Industrial Disputes Act, 1947. The other claims made by him are rejected.

P. T. KADKOL,

Presiding Officer,
Labour Court, Bangalore.

ORDER.

Bangalore, dated the 21st November 1967.

S. O. 2250.—WHEREAS by State Government Order No. FCL 12 LLD 67, dated 6th February 1967, the Industrial Dispute between the Workmen and the Management of Jolly Brothers (P) Ltd., Hindustan Aeronatics Ltd., P.O., Bangalore-17. was referred to the Labour Court, Bangalore for adjudication ;

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. FCL 12 LLD 67.]

By Order and in the name of the Governor of Mysore,

G. G. PUROHIT,
Under Secretary.